

(Public Notice - Attachment A)

Revised Framework for Mitigation Review in NC - April 22, 2008

This framework has been developed in accordance with all applicable regulations, policy, guidance related to the establishment of Mitigation Banks in NC. In addition, headquarters, USACE and EPA has published a final rule concerning Mitigation Banks, In-Lieu-Fee programs, and permittee responsible mitigation (33 CFR 325 and 332, Thursday, April 10, 2008), and this framework has been developed in reliance on that rule. The term “Interagency Review Team” or IRT found in the rule have been adopted here for clarity.

IRT Membership

Review and oversight of stream and wetland compensatory mitigation banks in NC will be provided by an Interagency Review Team (IRT), formerly the MBRT, composed of representatives from the state and Federal resource agencies as follows:

US Army Corps of Engineers
US Environmental Protection Agency
US Fish & Wildlife Service
NC Wildlife Resources Commission
NC Division of Coastal Management
NC Division of Water Quality
National Marine Fisheries Service

Roles

The goal of the IRT is to ensure that implementation, monitoring, and use of compensatory mitigation conducted in NC for impacts permitted pursuant to Sections 404 and 401 of the Clean Water Act and the Coastal Area Management Act is provided in a consistent manner, provides the suite of expected aquatic functions being restored, and will be self sustaining over the long term. It is expected that USACE review of mitigation banks will be conducted primarily by a designated POC in the USACE Field Office in which the bank is located.

All meetings of the IRT will be chaired by a USACE representative.

Depending on the number of Banks under review, the USACE IRT Chair may elect to hold IRT meetings on a regular basis with times and locations advertised by USACE/NCDWQ public notice in advance to ensure that all interested parties have opportunity to be placed on the agenda.

Mitigation providers will be allowed to attend to discuss prospectus, MBI's, monitoring reports and credit release provided such information is provided to the IRT at least 30 days prior to the meeting date. Items placed on the agenda will be at the discretion of the Chair.

This process is intended to facilitate the review of proposed mitigation banks in NC.

Banking Threshold Issues:

Description of Community Types:

Wetland community types found in a mitigation bank will be described in accordance with the procedures found in the NC Wetland Assessment Method (NC WAM, USACE, 2007). It is expected that impacts to the NC WAM types listed below will be compensated by the Mitigation Types as listed in order to qualify as "In-Kind" mitigation. Exceptions to the use of "In-Kind" mitigation may be allowed at the discretion of the permitting agencies on a case-by-case basis. The dichotomous key and instructions on its use may be found at

Mitigation Type	NCWAM Type
CAMA CoastalWetland	Salt/Brackish Marsh*
Riverine	Riverine Swamp Forest/Non-Tidal Freshwater Marsh, Tidal Freshwater Marsh
Riparian	Bottomland Hardwood Forest, Headwater Wetland, Flood-Plain Pool, Mountain Bog*
Non-Riparian wetter variety	Non-Riverine Swamp Forest, Seep, Small Basin Wetland, Pocosins, Estuarine Woody
Non-Riparian, Drier Variety	Pine Flat, Pine Savannah, Hardwood Flat

Wetland Mitigation Credit:

Wetland mitigation credits will be based on restoration equivalents such that:

- 1 acre of Restoration is equal to 1 restoration equivalent
- 2 acres of Enhancement is equal to 1 restoration equivalent
- 3 acres of creation is equal to 1 restoration equivalent
- 5 acres of Preservation is equal to 1 restoration equivalent

In order to satisfy a mitigation requirement of 2 acres of Restoration the mitigation provider must supply at least one acre of Restoration, the rest may be made of Enhancement, Preservation, or in exceptional cases Creation in the equivalent amounts listed above.

Note that the NC Division of Coastal Management requires 1:1 restoration of CAMA Coastal Wetlands. Neither Enhancement nor Preservation are accepted as mitigation for this community type

Stream Mitigation Credit

Stream Mitigation Credit will be based on the existing Stream Mitigation Guidelines (USACE, 2003) and reproduced here:

Mitigation Type	Restoration Equivalents
Restoration	1.0
Enhancement I	1.0 to 1.5
Enhancement II	1.5 to 2.5
Preservation	2.5 to 5.0

Assessment of stream quality will be conducted using the USACE Stream Quality Assessment worksheet which may be accessed at:

http://www.saw.usace.army.mil/WETLANDS/Forms/stream_quality.pdf

Stream Mitigation providers, especially those that are involved with stream mitigation on the Outer Coastal Plain, are strongly encouraged to read and become familiar with the information contained in the USACE/DENR paper dated December 1, 2005 entitled:

INFORMATION REGARDING STREAM RESTORATION IN THE OUTER COASTAL PLAIN OF NORTH CAROLINA, prepared by the US Army Corps of Engineers, Regulatory Division and the NC Department of Environment and Natural Resources, Division of Water Quality.

This paper may be accessed at:

(http://www.saw.usace.army.mil/WETLANDS/Policies/HWM12_1_05.pdf)

Credit Release Schedules:

Wetland Credit Release Schedule:

If deemed appropriate by the IRT, fifteen percent (15%) of a bank's total restoration credits shall be available for sale immediately upon completion of all of the following:

1. Execution of the mitigation banking instrument by the Sponsor, the Corps, and

other agencies eligible for membership in the MBRT who choose to execute the agreement;

2. Approval of the final mitigation plan;
3. Delivery of the financial assurances;
4. Recordation of the preservation mechanism, as well as a title opinion acceptable to the Corps covering the property;

Additionally, no later than the first full growing season following initial debiting of the bank, the Sponsor must complete the initial physical and biological improvements to the bank site pursuant to the mitigation plan.

Provided such physical and biological improvements are made to the IRT's satisfaction an additional 15% (total 30%) of the banks total credits shall be available for sale.

Subject to a bank sponsor's continued satisfactory completion of all required success criteria and monitoring, additional restoration mitigation credits will be available for sale by a bank sponsor on the following schedule:

10% after first year, if interim success measures are met (total 40%);

15% after second year; if interim success measures are met (total 55%);

20% after third year; if interim success measures are met (total 75%);

10% after fourth year; if interim success measures are met (total 85%);

15% after fifth year, if Success Criteria are met (total 100%)

Stream Credit Release:

The following credit release schedule applies only to those stream projects where Restoration or Enhancement I has been performed where pattern, dimension, and profile, or dimension and profile (respectively) have been improved. Projects constructed on the outer coastal plain that are subject to the Coastal Plain Information Paper (USACE/DWQ 2007) where an engineered stream channel was not constructed, will be subject to the criteria enumerated for wetlands above:

If deemed appropriate by the IRT, fifteen percent (15%) of a banks total stream credits shall be available for sale immediately upon completion of all of the following:

1. Execution of the mitigation banking instrument by the Sponsor, the Corps, and other agencies eligible for membership in the IRT who choose to execute the agreement;
2. Approval of the final mitigation plan;

3. Delivery of the financial assurances;
4. Recordation of the preservation mechanism, as well as the title opinion covering the property that is acceptable to the Corps.

Additional stream credits would be available according to the following release schedule:

- Construction release:

15 % upon completion of all initial physical and biological improvements made pursuant to the mitigation plan: (30% cumulative)
- After year 1:

10% provided channel is stable and all other success criteria are met (40%).
- After year 2:

10% provided channel is stable and all other success criteria are met (50%).
- After year 3:

10% provided channel is stable and all other success criteria are met (60%)
- After year 4:

10% provided channel is stable and all other success criteria are met (70%)
- After year 5:

15% provided channel is stable and all other success criteria are met (85%)

A reserve of 15% of the banks total stream credits shall be released any time after 2 bank-full events have occurred, in separate years, provided the channel stable and all other success criteria are met. In the event that less than two bank-full events occur during the monitoring period, remaining credit release shall be at the discretion of the MBRT.

Geographic Service Area

In most cases, the Primary Geographic Service Area (PGSA) of a mitigation bank (Bank) will be confined to the 8-digit HUC in which the Bank is located. However, use of the Bank for impacts located outside the PGSA may be considered on a case-by-case basis, during the permit evaluation process.

The permitting agencies may, at their discretion, elect to require additional mitigation due to the distance between the impact site and mitigation site.